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In re Application of :
HOLGER LOWE et. al. :
Application No.: 09/463,801 :
PCT Application No.: PCT/EP98/04726 :
Int. Filing Date: 29 July 1998 : COMMUNICATION
Atty. Docket No.:678-99 :
Priority Date: 30 July 1997 :
For: AGENT FOR PRODUCING AND/OR :
PROCESSING ALCOHOLIC BEVERAGES, :
IN PARTICULAR WINE OR SPARKLING :
WINE AND USE OF SAID AGENT :
:

This is a communication in response to applicant's request to substitute the 28 July 2000 translation for that received on 27 January 2000.

BACKGROUND

On 29 July 1998, applicants filed international application PCT/EP98/04726, which designates the U.S. and claims a priority date of 30 July 1997. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) on 11 February 1999. A demand in which the United States was elected was filed on 19 February 1999. Accordingly the 30-month deadline for entry into the U.S. national stage expired at midnight on 30 January 2001.

On 27 January 2000, applicant filed, *inter alia*, a request for immediate examination under 45 U.S.C. 371; the correct basic national fee for this application; a purported translation of the international application into English; and an unexecuted declaration of the inventors.

On 16 March 2000 a form PCT/DO/EO/903 (NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495) (hereinafter form PCT/DO/EO/903) was issued. This form indicated that the date of receipt of 35 U.S.C. 371 Requirements was 27 January 2000.

On 20 March 2000, applicants filed an executed declaration. A second form PCT/DO/EO/903 was issued on 29 December 2000. This form indicated that the date of receipt of 35 U.S.C. 371 Requirements was 16 March 2000.

On 28 April 2000, the United States Receiving Office mailed a form DO/EO/905 (NOTIFICATION OF MISSING REQUIREMENTS IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)) indicating that the declaration was not executed.

On 28 July 2000, applicants submitted a substitute specification and a copy of a previously furnished amendment. On 22 July 2002, applicants submitted a letter asking that this 28 July 2000 substitute translation be used as a corrected translation of the international application instead of the one furnished on 27 January 2000. This letter was accompanied by a check for \$130.00, for a translation submitted after the 30 month time limit had expired.

DISCUSSION

There were two form DO/EO/903's issued, each with different dates for the date of receipt of 35 U.S.C. 371 Requirements. It is noted that the original declaration was unsigned, and that an executed declaration was not furnished until 20 March 2000. Applicant has stated in the letter of 22 July 2002 that the declaration submitted 27 January 2000 "contains translation errors that only became apparent after it had been filed with the Office." A cursory comparison of the 28 July 2000 translation with that submitted on 27 January 2000 indicates that there are significant differences. Thus, the translation requirement of 35 U.S.C. 371(c)(2) was not complied with until 28 July 2000 and both form DO/EO/903's are incorrect.

CONCLUSION

For the reasons discussed above, the form DO/EO/903 issued on 16 March 2000 and the form DO/EO/903 issued on 29 December 2000 are in error and are hereby VACATED.

This application is being forwarded to the United States Designated/Elected Office for the issuance of a new form DO/EO/903 indicating a receipt date of 35 U.S.C. 371 requirements of 28 July 2000.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of this letter marked to the attention of the PCT Legal Office.



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